



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2021

Ms. Erin J. Onyon
Director of Public Records & Transparency Compliance
City of Mansfield
1200 East Broad Street
Mansfield, Texas 76063

OR2021-23457

Dear Ms. Onyon:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 901785 (Ref. No. 0663-2021).

The City of Mansfield (the "city") received a request for all records relating to a specified incident report. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not provide the requisite information under section 1701.661(a) for the submitted body worn camera recordings. As the submitted body worn camera recordings were not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the city need not release it.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Next, we note some of the remaining information is subject to article 2.1396 of the Code of Criminal Procedure, which provides:

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- (4) a procedure in which a specimen of the person’s breath or blood is taken.

Crim. Proc. Code art. 2.1396. Some of the remaining information consists of video recordings made by or at the direction of a peace officer employed by the city and contain footage of the requestor’s client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 (“A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.”). Thus, the requestor is entitled to receive copies of these video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although you assert the information at issue is excepted from disclosure under section 552.108 of the Government Code, a statutory right of access prevails over the Act’s general exceptions to public disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor’s statutory right of access under 2.1396 prevails; thus, the city may not withhold any portion of the remaining video recordings at issue that depict the stop, the arrest, the conduct of the requestor’s client, or a procedure in which a specimen of

¹ As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

the requestor's client's blood or breath is taken from the requestor's client under section 552.108 of the Government Code.

Next, we note the remaining information includes the results of an analysis of a blood specimen. Section 724.018 of the Transportation Code provides, "[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. We note the requestor is the representative of the person who provided the blood specimen at the request of a peace officer. You claim this information is excepted from disclosure under section 552.108 of the Government Code. As noted above, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451. Therefore, the city may not withhold the information at issue under section 552.108. Accordingly, the city must release the results of the analysis of the blood specimen, which we marked, pursuant to section 724.018 of the Transportation Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the requested information would interfere with law enforcement. *Id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information pertains to a pending criminal investigation or prosecution. We note, however, the remaining information includes a DIC-24 Statutory Warning, a copy of which was provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Thus, the DIC-24 form may not be withheld under section 552.108(a)(1). However, based on your representations and our review, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court notes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information at issue.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information and the DIC-24 form, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, as the body worn camera recordings were not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the city need not release it. The city must release the portions of the remaining video recordings at issue that depict the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken from the

requestor's client pursuant to article 2.1396 of the Code of Criminal Procedure. The city must release the results of the analysis of the blood specimen, which we marked, pursuant to section 724.018 of the Transportation Code. With the exception of the basic information and the DIC-24 form, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Chase D. Young
Attorney
Open Records Division

CDY/jm

Ref: ID# 901785

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the requestor has a special right of access to some of the information being released in this instance. *See* Crim. Proc. Code art. 2.1396; 724.018; *see also* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). If the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.